

**EXHIBIT 1**

Amy B. Vandeveld, SBN 137904  
LAW OFFICES OF AMY B. VANDEVELD  
1850 Fifth Avenue, Suite 22  
San Diego, California 92101  
Telephone: (619) 231-8883  
Facsimile: (619) 231-8329

Attorney for Plaintiff

FILED  
07 DEC 20 PM 4:22  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY: *A*  
DEPUTY

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KAREL SPIKES,

Plaintiff,

vs.

EUROPEAN CAR SERVICE; ANDREW  
MACIEJEWSKI; ZENNON SMOCZYNSKI and  
DOES 1 THROUGH 10, Inclusive,

Defendants.

Case No.:

**07 CV 2394 LAB WMC**  
CIVIL COMPLAINT

DEMAND FOR JURY TRIAL  
[F.R.C.P. §38(b);  
Local Rule 38.1]

Plaintiff, KAREL SPIKES (hereinafter referred to as  
"Plaintiff"), file this cause of action against Defendants  
EUROPEAN CAR SERVICE, ANDREW MACIEJEWSKI, ZENNON SMOCZYNSKI and  
DOES 1 THROUGH 10, Inclusive, and would show unto the Court the  
following:

I.

JURISDICTION AND VENUE

1. This Court has original jurisdiction of this civil  
action pursuant to 28 USC §1331, 28 USC §§1343(a)(3) and  
1343(a)(4) for claims arising under the Americans with  
Disabilities Act of 1990, 42 USC §12101 et seq. and the Court's  
supplemental jurisdiction, 28 USC §1367.

2. Venue in this Court is proper pursuant to 28 USC §§1391(b) and (c).

3. Pursuant to 28 USC §1367(a), Plaintiff shall assert all causes of action based on state law, as plead in this complaint, under the supplemental jurisdiction of the federal court. All the causes of action based on federal law and those based on state law, as herein stated, arose from a common nucleus of operative fact. That is, Plaintiff was denied equal access to Defendants' facilities, goods, and/or services in violation of both federal and state laws and/or was injured due to violations of federal and state access laws. The state actions of Plaintiff are so related to the federal actions that they form part of the same case or controversy. The actions would ordinarily be expected to be tried in one judicial proceeding.

## II.

## THE PARTIES

4. Defendant EUROPEAN CAR SERVICE is, and at all times mentioned herein was, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. EUROPEAN CAR SERVICE is located at 8855 La Mesa Boulevard, La Mesa, CA (hereinafter "the subject property".) Plaintiff is informed and believes and thereon alleges that Defendant EUROPEAN CAR SERVICE is, and at all times mentioned herein was, the owner, lessor or lessee of the subject property and/or the owner and/or operator of the public accommodation located at the subject property.

5. Defendant ANDREW MACIEJEWSKI is, and at all times mentioned herein was, an individual residing in and/or doing

1 business under the laws of the State of California. Plaintiff is  
2 informed and believes and thereon alleges that Defendant ANDREW  
3 MACIEJEWSKI is, and at all times mentioned herein was, the owner,  
4 lessor or lessee of the subject property.

5 6. Defendant ZENNON SMOCZYNSKI is, and at all times  
6 mentioned herein was, an individual residing in and/or doing  
7 business under the laws of the State of California. Plaintiff is  
8 informed and believes and thereon alleges that Defendant ZENNON  
9 SMOCZYNSKI is, and at all times mentioned herein was, the owner,  
10 lessor or lessee of the subject property.

11 7. Plaintiff is informed and believes, and thereon  
12 alleges, that Defendants and each of them herein were, at all  
13 times relevant to the action, the owners, franchisees, lessees,  
14 general partners, limited partners, agents, employees,  
15 employers, representing partners, subsidiaries, parent  
16 companies, joint venturers and/or divisions of the remaining  
17 Defendants and were acting within the course and scope of that  
18 relationship. Plaintiff is further informed and believes, and  
19 thereon alleges, that each of the Defendants herein gave  
20 consent to, ratified, and/or authorized the acts alleged herein  
21 of each of the remaining Defendants.

22 8. Plaintiff is an otherwise qualified disabled  
23 individual as provided in the Americans with Disabilities Act  
24 of 1990, 42 USC §12102, Part 5.5 of the California Health &  
25 Safety Code and the California Unruh Civil Rights Act, §§51, et  
26 seq., 52, et seq., the California Disabled Persons Act, §§54,  
27 et seq., and other statutory measures which refer to the  
28 protection of the rights of "physically disabled persons."

1 Plaintiff visited the public accommodation owned and/or  
2 operated by Defendants and/or located at the subject property  
3 for the purpose of availing himself of the goods, services,  
4 facilities, privileges, advantages, or accommodations operated  
5 and/or owned by Defendants and/or located on the subject  
6 property.

7 9. Plaintiff is informed and believes and thereon alleges  
8 that the subject facility has been newly constructed and/or  
9 underwent remodeling, repairs, or alterations since 1971, and  
10 that Defendants have failed to comply with California access  
11 standards which applied at the time of each such new  
12 construction and/or alteration.

13 **III.**

14 **FACTS**

15 10. Plaintiff has a mobility impairment and uses a  
16 wheelchair. Moreover, he has had a history of or has been  
17 classified as having a physical impairment, as required by 42  
18 USC §12102(2)(A).

19 11. On or about July 10, 2007 and continuing through the  
20 present date, Plaintiff was denied full and equal access to the  
21 facilities owned and/or operated by the Defendants because the  
22 facility and/or subject property were inaccessible to members  
23 of the disabled community who use wheelchairs for mobility.  
24 Plaintiff was denied full and equal access to portions of the  
25 property because of barriers which included, but are not  
26 limited to, inaccessible path of travel and lack of accessible  
27 parking space, as well as, lack of signage for said space.  
28 Plaintiff was also denied full and equal access because of

1 discriminatory policies and practices regarding accommodating  
2 people with disabilities. Plaintiff filed this lawsuit to  
3 compel compliance with access laws and regulations.

4 12. As a result of Defendants' failure to remove  
5 architectural barriers, Plaintiff suffered injuries. People  
6 with disabilities, because of the existing barriers, are denied  
7 full and equal access to the Defendants' facilities. The ADA  
8 has been in effect for more than 16 years. Given the vast  
9 availability of information about ADA obligations, including  
10 FREE documents which are available from the U.S. Department of  
11 Justice by calling (800) 514-0301 or at the following web  
12 sites: [www.sba.gov/ada/smbusgd.pdf](http://www.sba.gov/ada/smbusgd.pdf), [www.ada.gov/taxpack.pdf](http://www.ada.gov/taxpack.pdf) and  
13 [www.usdoj.gov/crt/ada](http://www.usdoj.gov/crt/ada), the failure of Defendants to comply with  
14 their barrier removal obligations is contemptible.

15 13. Plaintiff is an otherwise qualified individual as  
16 provided in the Americans with Disabilities Act or 1990, 42 USC  
17 §12102, the Rehabilitation Act of 1973, Section 504 (as amended  
18 29 USC §794) and the California Unruh Civil Rights Act, Civil  
19 Code §§51, 52, 54.1, and 54.3, and other statutory measures  
20 which refer to the protection of the rights of "physically  
21 disabled persons." Plaintiff visited the public facilities  
22 owned and operated by Defendants for the purpose of availing  
23 himself of the goods and services offered and provided by  
24 Defendants and/or for the purpose of obtaining removal of  
25 architectural barriers and/or modification of policies,  
26 practices and procedures to provide accessibility to people  
27 with disabilities. Plaintiff was injured in fact, as set forth  
28 more specifically herein.



1        14. Plaintiff alleges that Defendants will continue to  
2 operate public accommodations which are inaccessible to him and  
3 to other individuals with disabilities. Pursuant to 42 USC  
4 §12188(a), Defendants are required to remove architectural  
5 barriers to their existing facilities.

6        15. Plaintiff has no adequate remedy at law for the  
7 injuries currently being suffered in that money damages will  
8 not adequately compensate Plaintiff for the amount of harm  
9 suffered as a result of exclusion from participation in the  
10 economic and social life of this state.

11       16. Plaintiff believes that architectural barriers  
12 precluding Plaintiff full and equal access of the public  
13 accommodation will continue to exist at Plaintiff's future  
14 visits, which will result in future discrimination of  
15 Plaintiff, in violation of the Americans with Disabilities Act.  
16 Plaintiff is currently being subjected to discrimination  
17 because Plaintiff cannot make use of and obtain full and equal  
18 access to the facilities, goods and/or services offered by  
19 Defendants to the general public. Plaintiff seeks damages for  
20 each offense relating to each of Plaintiff's visits to the  
21 subject property when Plaintiff was denied full and equal  
22 access to the subject property or was deterred from attempting  
23 to avail himself of the benefits, goods, services, privileges  
24 and advantages of the place of public accommodation at the  
25 subject property because of continuing barriers to full and  
26 equal access.

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IV.

FIRST CLAIM FOR  
VIOLATION OF AMERICAN WITH DISABILITIES ACT  
42 USC §12101, et seq.

17. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 16, inclusive, as though set forth fully herein.

18. Plaintiff was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased and/or operated by Defendants, in violation of 42 USC §12182(a). Plaintiff was, therefore, subjected to discrimination and is entitled to injunctive relief pursuant to 42 USC §12188 as a result of the actions or inaction of Defendants.

19. Among other remedies, Plaintiff seeks an injunctive order requiring compliance with state and federal access laws for all access violations which exist at the property, requiring removal of architectural barriers and other relief as the court may deem proper. Plaintiff also seeks any other order that will redress the discrimination to which he has been subjected, is being subjected and/or will be subjected.

## V.

SECOND CLAIM FOR  
VIOLATION OF CALIFORNIA CIVIL CODE

20. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 19, inclusive, as though set forth fully herein.

21. Based on the facts plead hereinabove and elsewhere in



1 this complaint, Defendants did, and continue to, discriminate  
2 against Plaintiff and persons similarly situated by denying  
3 disabled persons full and equal access to and enjoyment of the  
4 subject facilities and of Defendants' goods, services,  
5 facilities, privileges, advantages or accommodations within a  
6 public accommodation, in violation of California Civil Code  
7 §§51, et seq., 52, et seq., and 54, et seq.

8       22. Defendants' actions constitute a violation of  
9 Plaintiff's rights under California Civil Code §§51, et seq.,  
10 52, et seq., and 54, et seq. and therefore Plaintiff is  
11 entitled to injunctive relief remedying all such violations of  
12 California access laws and standards. In addition, Plaintiff  
13 is entitled to damages under California Civil Code §54.3 for  
14 each offense. The amount of damages suffered by Plaintiff is  
15 not yet determined. When the amount is ascertained, Plaintiff  
16 will ask the Court for leave to amend this complaint to reflect  
17 this amount. Plaintiff is also entitled to and requests  
18 attorneys' fees and costs.

19       23. The actions of Defendants were and are in violation of  
20 the Unruh Civil Rights Act, California Civil Code §§51, et seq.  
21 and therefore Plaintiff is entitled to injunctive relief  
22 remedying all such violations of California access laws and  
23 standards. In addition, Plaintiff is entitled to damages under  
24 California Civil Code §52 for each offense. The amount of  
25 damages suffered by Plaintiff is not yet determined. When the  
26 amount is ascertained, Plaintiff will ask the Court for leave  
27 to amend this complaint to reflect this amount.

28       24. Plaintiff seeks all of the relief available to him

1 under Civil Code §§51, 52 et seq., 54, 54.1, 54.2, 54.3, and  
2 any other Civil Code Sections which provide relief for the  
3 discrimination suffered by Plaintiff, including damages and  
4 attorneys fees.

5 VI.

6 THIRD CLAIM FOR  
7 VIOLATION OF HEALTH AND  
8 SAFETY CODE §19950, ET SEQ.

9 25. Plaintiff re-alleges and incorporates by reference  
10 each and every allegation contained in paragraphs 1 through 24,  
11 inclusive, as though set forth fully herein.

12 26. Defendants' facilities are public accommodations  
13 within the meaning of Health and Safety Code §19950, et seq.,  
14 and Plaintiff is informed and believes and thereon alleges that  
15 Defendants have newly built or altered the subject property  
16 and/or the subject facility since 1971 within the meaning of  
17 California Health and Safety Code §19959. The aforementioned  
18 acts and omissions of Defendants constitute a denial of equal  
19 access to the use and enjoyment of the Defendants' facilities  
20 by people with disabilities.

21 27. Defendants' failure to fulfill their duties to provide  
22 full and equal access to their facilities by people with  
23 disabilities has caused Plaintiff to suffer deprivation of  
24 Plaintiff's civil rights, as well as other injuries.

25 28. As a result of Defendants' violations of Health and  
26 Safety Code §§19955, et seq., described herein, Plaintiff is  
27 entitled to and requests injunctive relief pursuant to Health  
28 and Safety Code §§19953, and to reasonable attorney's fees and  
costs.

## VII.

FOURTH CLAIM FOR DECLARATORY RELIEF

29. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 28, inclusive, as though set forth fully herein.

30. An actual controversy now exists in that Plaintiff is informed and believes and thereon alleges that Defendants' premises are in violation of the disabled access laws of the State of California including, but not limited to, Civil Code §§51, et seq., §§52, et seq., §§54, et seq., Health and Safety Code §§19950, et seq., Government Code §§4450, et seq. and 7250, et seq., Title 24 of the California Code of Regulations, and/or Title III of the Americans with Disabilities Act and its implementing Accessibility Regulations.

31. A declaratory judgment is necessary and appropriate at this time so that each of the parties may know their respective rights and duties and act accordingly.

## VIII.

FIFTH CLAIM FOR INJUNCTIVE RELIEF

32. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 31, inclusive, as though set forth fully herein.

33. Plaintiff will suffer irreparable harm unless Defendants are ordered to remove architectural barriers at Defendants' public accommodation, and/or to modify their policies and practices regarding accommodating people with disabilities. Plaintiff has no adequate remedy at law to redress the discriminatory conduct of Defendants.

1 34. Plaintiff seeks injunctive relief to redress  
2 Plaintiff's injuries.

3 IX.

4 JURY DEMAND

5 35. Pursuant to Rule 38 of the Federal Rules of Civil  
6 Procedure, Plaintiffs hereby request a jury trial.

7 WHEREFORE, Plaintiff prays for judgment against the  
8 Defendants, EUROPEAN CAR SERVICE, ANDREW MACIEJEWSKI, ZENNON  
9 SMOCZYNSKI and DOES 1 through 10, as follows:

- 10 1. For injunctive relief, compelling Defendants to comply  
11 with the Americans with Disabilities Act, the Unruh  
12 Civil Rights Act and the Disabled Persons Act. Note:  
13 the plaintiff is not invoking section 55 of the  
14 California Civil Code and is not seeking injunctive  
15 relief under that section;
- 16 2. That the Court declare the respective rights and  
17 duties of Plaintiff and Defendants as to the removal  
18 of architectural barriers at Defendants' public  
19 accommodations;
- 20 3. An order awarding Plaintiff actual, special and/or  
21 statutory damages for violation of his civil rights  
22 and for restitution including, but not limited to,  
23 damages pursuant to the applicable Civil Code Sections  
24 including, but not limited to, §§52 and 54.3 for each  
25 and every offense of Civil Code §§51 and 54;
- 26 4. An award of compensatory damages according to proof;
- 27 5. An award of up to three times the amount of  
28 actual damages pursuant to the Unruh Civil

1 Rights Act and the Disabled Persons Act; and

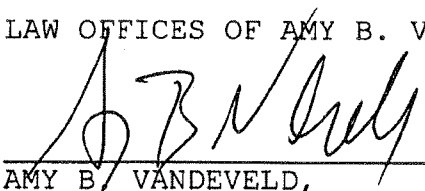
2 6. An order awarding Plaintiff reasonable attorneys' fees  
3 and costs;

4 7. Such other and further relief as the Court deems  
5 proper.

6 DATED:

12/19/07

LAW OFFICES OF AMY B. VANDEVELD

7  
8   
9 AMY B. VANDEVELD,  
Attorney for Plaintiff

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 145783 - SR  
\* \* C O P Y \* \*  
December 20, 2007  
16:22:20**

**Civ Fil Non-Pris**

USAO #: 07CV2394 CIV. FIL.  
Judge.: LARRY A BURNS  
Amount.: \$350.00 CK  
Check#: BC#3317

**Total-> \$350.00**

FROM: SPIKES V. EUROPEAN CAR SVC, ET  
CIVIL FILING



1544

(Rev. 07/99)

THE JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

KAREL SPIKES,

DEFENDANTS

EUROPEAN CAR SERVICE  
MACIEJEWSKI; ZENNON SMOCZYNSKI  
and DOES 1 THROUGH 10  
Inclusive

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

BY: San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Amy B. Vandeveld, Esq.  
LAW OFFICES OF AMY B. VANDEVELD  
1850 Fifth Avenue, Suite 22  
San Diego, CA 92101 (619) 231-8883

ATTORNEYS (IF KNOWN)

07 CV 2394 LAB WMC

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party)
- U.S. Government Defendant ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF		PT	DEF
Citizen of This State	• 1	• 1	Incorporated or Principal Place of Business in This State	• 4	• 4
Citizen of Another State	• 2	• 2	Incorporated and Principal Place of Business in Another State	• 5	• 5
Citizen or Subject of a Foreign Country	• 3	• 3	Foreign Nation	• 6	• 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12111, 11281-12184 and 12201 et. seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<ul style="list-style-type: none"> <li>110 Insurance</li> <li>120 Marine</li> <li>130 Miller Act</li> <li>140 Negotiable Instrument</li> <li>150 Recovery of Overpayment &amp; Enforcement of Judgment</li> <li>151 Medicare Act</li> <li>152 Recovery of Defaulted Student Loans (Excl. Veterans)</li> <li>153 Recovery of Overpayment of Veterans Benefits</li> <li>160 Stockholders Suits</li> <li>190 Other Contract</li> <li>195 Contract Product Liability</li> </ul>	<ul style="list-style-type: none"> <li>310 Airplane</li> <li>315 Airplane Product Liability</li> <li>320 Assault, Libel &amp; Slander</li> <li>330 Federal Employers' Liability</li> <li>340 Marine</li> <li>345 Marine Product Liability</li> <li>350 Motor Vehicle</li> <li>355 Motor Vehicle Product Liability</li> <li>360 Other Personal Injury</li> </ul>	<ul style="list-style-type: none"> <li>610 Agriculture</li> <li>620 Other Food &amp; Drug</li> <li>625 Drug Related Seizure of Property 21 USC 881</li> <li>630 Liquor Laws</li> <li>640 RR &amp; Truck</li> <li>650 Airline Regs</li> <li>660 Occupational Safety/Health</li> <li>690 Other</li> </ul>	<ul style="list-style-type: none"> <li>422 Appeal 28 USC 158</li> <li>423 Withdrawal 28 USC 157</li> <li>PROPERTY RIGHTS</li> <li>820 Copyrights</li> <li>830 Patent</li> <li>840 Trademark</li> <li>SOCIAL SECURITY</li> <li>861 HIA (13958)</li> <li>862 Black Lung (923)</li> <li>863 DIWC/DIWW (405(g))</li> <li>864 SSID Title XVI</li> <li>865 BSL (405(a))</li> <li>FEDERAL TAX SUITS</li> <li>870 Taxes (U.S. Plaintiff or Defendant)</li> <li>871 IRS - Third Party 26 USC 7609</li> </ul>	<ul style="list-style-type: none"> <li>480 State Reappointment</li> <li>410 Antitrust</li> <li>430 Banks and Banking</li> <li>450 Commerce/ICC Rates/etc.</li> <li>460 Deportation</li> <li>470 Racketeer Influenced and Corrupt Organizations</li> <li>810 Selective Service</li> <li>850 Securities/Commodities Exchange</li> <li>875 Customer Challenge 12 USC</li> <li>891 Agricultural Acts</li> <li>892 Economic Stabilization Act</li> <li>893 Environmental Matters</li> <li>894 Energy Allocation Act</li> <li>895 Freedom of Information Act</li> <li>900 Appeal of Fee Determination Under Equal Access to Justice</li> <li>950 Constitutionality of State</li> <li>890 Other Statutory Actions</li> </ul>
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<ul style="list-style-type: none"> <li>210 Land Condemnation</li> <li>220 Foreclosure</li> <li>230 Rent Lease &amp; Ejectment</li> <li>240 Tort to Land</li> <li>245 Tort Product Liability</li> <li>290 All Other Real Property</li> </ul>	<ul style="list-style-type: none"> <li>441 Voting</li> <li>442 Employment</li> <li>443 Housing/Accommodations</li> <li>444 Welfare</li> <li>448 Other Civil Rights</li> </ul>	<ul style="list-style-type: none"> <li>510 Motions to Vacate Sentence Habeas Corpus</li> <li>530 General</li> <li>535 Death Penalty</li> <li>540 Mandamus &amp; Other</li> <li>550 Civil Rights</li> <li>555 Prisoner Conditions</li> </ul>		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding • ☐ 2 Removal from State Court • ☐ 3 Remanded from Appellate Court • ☐ 4 Reinstated or Reopened • ☐ 5 Transferred from another district (specify) • ☐ 6 Multidistrict Litigation • ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

• CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ To be determined at trial

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES • NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE

12/18/07

SIGNATURE OF ATTORNEY OF RECORD

# 145783 9350

MODMA\PCDOCS\WORDPERFECT\22816\ January 24, 2000 (3:10pm)

12/20/07

Signature of Attorney of Record

**EXHIBIT 2**

1 Amy B. Vandeveld, SBN 137904  
LAW OFFICES OF AMY B. VANDEVELD  
2 1850 Fifth Avenue, Suite 22  
San Diego, California 92101  
3 Telephone: (619) 231-8883  
Facsimile: (619) 231-8329  
4 Attorney for Plaintiff

5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 KAREL SPIKES,

11 Plaintiff,

12 EUROPEAN CAR SERVICE; ANDREW  
13 MACIEJEWSKI; ZENNON SMOCZYNSKI and  
14 DOES 1 THROUGH 10, Inclusive,  
Defendants.

Case No.: 07 CV 2394  
LAB (WMC)

REQUEST FOR ENTRY OF  
CLERK'S DEFAULT AGAINST  
DEFENDANT ANDREW  
MACIEJEWSKI

15  
16 Plaintiff, KAREL SPIKES, respectfully requests that the  
17 Clerk of the United States District Court, Southern District,  
18 enter default against defendant ANDREW MACIEJEWSKI.

19 SPIKES filed the instant Complaint on December 20, 2007.  
20 ANDREW MACIEJEWSKI was personally served with the Complaint and  
21 Summons on January 15, 2008. The Proof of Service and Summons  
22 was filed with this Court on January 23, 2008 (A copy of the  
23 Summons and Declaration of Service filed with this Court is  
24 attached to the accompanying Declaration of Amy B. Vandeveld as  
25 Exhibit "A".)

26 Attached as Exhibit "B" to the Vandeveld Declaration is the  
27 Declaration of Greg Cole, process server, confirming that he  
28 personally served an individual who identified himself as Andrew

1 Maciejewski at approximately 10:00 a.m. on January 15, 2008.

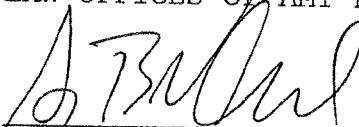
2 Pursuant to F.R.Civ.P. Rule 12, ANDREW MACIEJEWSKI was  
3 required to respond to the Complaint within 20 days of said  
4 service. ANDREW MACIEJEWSKI failed to file a response within the  
5 20 day period and, in fact, has never filed a response to the  
6 instant Complaint.

7 Plaintiff was subjected to discrimination in the instant  
8 action because of inaccessible paths of travel and lack of an  
9 accessible parking space, as well as lack of signage for such  
10 space. Plaintiff seeks \$4,000.00 per offense, as well as damages  
11 for emotional distress and other injuries, as authorized by  
12 California Civil Code Section 52. Plaintiff also seeks recovery  
13 of his attorneys' fees and costs, as provided by California Civil  
14 Code Sections 51, et seq., and 54 et seq., and by Title III of  
15 the Americans with Disabilities Act, 42 USC Sec. 12188.

16 Respectfully submitted:

17 DATED 2/13, 2008

LAW OFFICES OF AMY B. VANDEVELD

18   
19  
20 AMY B. VANDEVELD,  
Attorney for Plaintiff

1 Amy B. Vandeveld, State Bar No. 137904  
2 LAW OFFICES OF AMY B. VANDEVELD  
3 1850 Fifth Avenue, Suite 22  
4 San Diego, California 92101  
5 Telephone: (619) 231-8883  
6 Facsimile: (619) 231-8329

7 Attorney for Plaintiff

8  
9 IN THE UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 KAREL SPIKES,

12 Plaintiff,

13 vs.

14 EUROPEAN CAR SERVICE; ANDREW  
15 MACIEJEWSKI; ZENNON SMOCZYNSKI and  
16 DOES 1 THROUGH 10, Inclusive,

17 Defendants.

Case No.: 07 CV 2394  
LAB (WMC)

DECLARATION OF AMY B.  
VANDEVELD IN SUPPORT  
OF REQUEST FOR ENTRY  
OF CLERK'S DEFAULT  
JUDGMENT AGAINST  
DEFENDANT ANDREW  
MACIEJEWSKI

18 I, AMY B. VANDEVELD, declare:

19 1. I am the attorney for Plaintiff, and am licensed and  
20 admitted to practice before all the courts of California,  
21 including the Southern District of United States District Court  
22 in California.

23 2. I have personal knowledge of the facts set forth in  
24 this Declaration and if called as a witness I could competently  
25 testify to the following facts.

26 3. Attached hereto as Exhibit "A" is a true and correct  
27 copy of the Summons and Return of Service of Defendant ANDREW  
28

1 MACIEJEWSKI.

2 4. Attached hereto as Exhibit "B" is a true and correct  
3 copy of the Declaration of Greg Cole, certified process server,  
4 confirming that he personally served an individual who identified  
5 himself as Andrew Maciejewski at approximately 10:00 a.m. on  
6 January 15, 2008.

7 I declare under penalty of perjury under the laws of the  
8 State of California and the United States of America that the  
9 foregoing is true  
10 and correct.

11 Executed this 13<sup>th</sup> day of February, 2008, at San  
12 Diego, California.

13  
14   
AMY B. VANDEVELD





AMY B. VANDEVELD, ESQ. SBN 137904  
LAW OFFICES OF AMY B. VANDEVELD  
1650 5TH AVE.  
SAN DIEGO, CA 92101  
619-231-8883

Attorney for: PLAINTIFF

Ref. No. : 0297901-02  
Atty. File No. : 07CV2394LABWMC

UNITED STATES DISTRICT COURT, SO. DISTRICT OF CA  
SOUTHERN JUDICIAL DISTRICT

PLAINTIFF : KAREL SPIKES  
DEFENDANT : EUROPEAN CAR SERVICE, et al.

Case No.: 07 CV 2394 LAB WMC  
PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS IN A CIVIL ACTION; COMPLAINT; CIVIL COVER SHEET
3. a. Party served : ANDREW MACIEJEWSKI  
b. Person served : Party in item 3a
4. Address where the party was served 8855 LA MESA BOULEVARD  
LA MESA, CA 91941 (Business)
5. I served the party  
a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on January 15, 2008 (2) at: 10:00 AM
6. The "Notice to the person served" (on the summons) was completed as follows:  
a. as an individual defendant.
7. Person who served papers  
a. GREG COLE  
b. KNOX ATTORNEY SERVICE, INC.  
2250 Fourth Avenue  
San Diego, California 92101  
c. 619-233-9700  
d. Fee for service: \$28.75  
e. I am:  
(3) a registered California process server  
(i) an independent contractor  
(ii) Registration No.: 387  
(iii) County: SAN DIEGO, CA

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 16, 2008

Signature: 

GREG COLE

PROOF OF SERVICE

Exhibit A  
7

1 AMY B. VANDEVELD, ESQ., SBN 137904  
2 **LAW OFFICES OF AMY B. VANDEVELD**  
3 1850 5TH AVE.  
4 SAN DIEGO CA 92101  
5 Phone: 619-231-8883

6 Attorney for Plaintiff, KAREL SPIKES

7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 KAREL SPIKES, ) Case No.: 07 CV 2394 LAB WMc  
12 )  
13 Plaintiff, ) DECLARATION OF GREG COLE  
14 vs. ) REGARDING SERVICE OF SUMMONS IN  
15 ) A CIVIL ACTION AND COMPLAINT  
16 EUROPEAN CAR SERVICE, et al., ) UPON DEFENDANT, ANDREW  
17 ) MACIEJEWSKI  
18 )  
19 Defendants )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

26 I, Greg Cole, declare that I have personal knowledge of the  
27 matters contained herein. To those matters contained herein,  
28 that I do not have personal knowledge of, I state them upon  
29 information and belief. If called as a witness, I can and will  
30 competently testify to the matters contained herein.

31 I am an independent California registered process server  
32 (San Diego County Registration No. 387) for Knox Attorney  
33 Service, Inc., located at 2250 Fourth Avenue, San Diego, CA  
34 92101; the business phone number is (619)233-9700. I am over the  
35

1 age of eighteen and not a party to this action.

2 1. On January 15, 2008, I received a request to serve a  
3 Summons in a Civil Action, Complaint and Civil Cover Sheet upon  
4 defendant, Andrew Maciejewski (hereinafter "Defendant").  
5 Plaintiff's attorney provided a business address of 8855 La Mesa  
6 Boulevard, La Mesa, CA 91941.

7 2. At approximately 10:00a.m., I arrived at the above 8855  
8 La Mesa Boulevard address. At that time, I effectuated personal  
9 service upon a gentleman who identified himself as Defendant.

10 I declare under the penalty of perjury under the laws of  
11 the State of California that the foregoing is true and correct.

12 Dated this 6<sup>th</sup> day of February, 2008

13   
14 GREG COLE  
15  
16  
17  
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24  
25

PROOF OF SERVICE

I, the undersigned, declare that: I am authorized to serve the following document(s) in the within action pursuant to F.R.Civ.P. 4(c) and that the documents were served on today's date as follows:

1. Case Name/USDC Number:  
Spikes v. European Car Service  
USDC No.: 07 cv 2394 LAB (WMC)
2. Document(s) served:  
REQUEST FOR ENTRY OF CLERK'S DEFAULT AGAINST DEFENDANT ANDREW MACIEJEWSKI; DECLARATION OF AMY B. VANDEVELD IN SUPPORT OF REQUEST FOR ENTRY OF CLERK'S DEFAULT JUDGMENT AGAINST DEFENDANT ANDREW MACIEJEWSKI
3. Person(s) served/Place of service:

Thanasi Preovolos, Esq.  
PREOVOLOS & ASSOCIATES, ALC  
401 B Street, Suite 1160  
San Diego, CA 92101  
Facsimile: (619) 238-5344  
Counsel for Defendants EUROPEAN CAR SERVICE and ZENON SMOCYNSKI

Andrew Maciejewski  
8855 La Mesa Boulevard  
La Mesa, CA 91941  
Defendant

4. Manner of Service:
  - (a) Personal Service: By handing copies of the document(s) to the person served [F.R.Civ.P. 5(b)(2)(A)].
  - ✓ (b) Service by Mail: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid, at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit. [F.R.Civ.P. 5(b)(2)(B); Cal. Code of Civil Procedure, Sections 1013a, 2015]
  - (c) Facsimile Transmission: From Fax No. (619) 231-8329 to the facsimile number(s) listed on this proof of service. The facsimile machine I used complied with Rule 2003(3), and no error was reported by the machine. [[F.R.Civ.P. 5(b)(2)(D)].

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct.

Executed On: 2/13/08

By:

Laurie Miller  
LAURIE MILLER

United States District Court  
SOUTHERN DISTRICT OF CALIFORNIA

Karel Spikes

Plaintiff,

vs

Andrew Maciejewski

Defendant,

Civil No. 07cv2394LAB-(WMc)  
DEFAULT

It appears from the records in the above entitled action that Summons issued on the Original Complaint filed on 12/20/07 has been regularly served upon the above named Defendant; and it appears from the records herein that the Defendant has failed to plead or otherwise defend in said action as required by said Summons and provided by the Federal Rules of Civil Procedure. Now, therefore, the DEFAULT of the Defendants is hereby entered.

Entered  
On:02/14/08

W. SAMUEL HAMRICK, JR., CLERK

By: s/V. Perez

, Deputy



**EXHIBIT 3**

1 Lawrence Mudgett SBN 252898  
2 Athanasios Preovolos SBN 182334  
3 Preovolos & Associates, a Law Corporation  
4 401 B Street, Suite 1520  
5 San Diego, CA 92101  
6 Telephone: 619-696-0520  
7 Facsimile: 619-238-5344

8 Attorney for Defendants  
9 Zenon Smoczynski and European Car Service

10 **DECLARATION OF ZENON SMOCZYNSKI**

11 I am ZENON SMOCZYNSKI, I have independent personal knowledge of the facts attested  
12 herein and declare them to be true and correct under penalty of perjury. If called upon to do  
13 so I could and would testify to the same.

- 14 1) I am the sole owner and operator of European Car Service, I am the only  
15 mechanic, I have no employees, and have been in business since on or about  
16 1992.
- 17 2) European Car Service is located at 8855 La Mesa Blvd in La Mesa, California  
18 (hereinafter "the property") and I co-own the property with Andrew  
19 Maciejewski.
- 20 3) I specialize in repairing European automobiles, I have no retail inventory, and  
21 my clients do not frequently visit the property.
- 22 4) The property consists of an office, mechanics garage, surrounding area, and  
23 a vacant lot.
- 24 5) My clients either contact me, their vehicles are towed to me, or they are  
25 referred to me. I do not obtain clients by any other means.
- 26 6) I do not service my client's European cars unless I am contracted to do so  
27 first.
- 28 7) My clients contract for services and then pay me upon completion.
- 8) Oftentimes, individuals first contact me seeking a written estimate for my  
services.
- 9) I have neither contracted with nor been paid by Karel Spikes.

- 1 10) I have never provided Karel Spikes a written estimate.
- 2 11) I was the only mechanic present at the property on July 10, 2007 and an
- 3 individual that I now know to be Karel Spikes drove onto the property in a
- 4 white Mercedes.
- 5 12) Karel Spikes did not exit his vehicle.
- 6 13) He rolled down his window and asked me for a quote to service his car. I
- 7 cannot recall what he requested to have repaired.
- 8 14) I do not give anyone verbal quotes and refused to quote him a price.
- 9 15) Spikes then left European Car Service.
- 10 16) I have not seen Karel Spikes or his white Mercedes ever since.
- 11 17) I was not aware of his handicap as he did not exit his vehicle.
- 12 18) The entire incident lasted approximately one minute.
- 13 19) On or about March 5, 2008 my attorney Lawrence Mudgett showed me a
- 14 photograph of Karel Spikes and a Mercedes model 300TE station wagon with
- 15 disabled license plate number Y0628.
- 16 20) This was the first time I had seen Karel Spikes or that Mercedes wagon since
- 17 July 10, 2007.
- 18 21) I had no basis to conclude the individual in the photograph was Karel Spikes
- 19 or that the Mercedes wagon belonged to him but for my attorney's
- 20 representations.
- 21 22) Upon seeing the photograph I was able to recall the incident described in
- 22 sections 11- 18 above.
- 23 23) I was surprised that the individual in the incident above is the same man who
- 24 is suing me now since I never worked on his car, prepared a quote, or was
- 25 even aware of his handicap.
- 26 24) I have not serviced any Mercedes model 300TE wagons since the year 2000
- 27 and to the best of my knowledge, I cannot recall ever servicing any Mercedes
- 28 model 300TE wagon at any time.
- 25) On January 15, 2008 I was the only employee present at European Car
- Service.

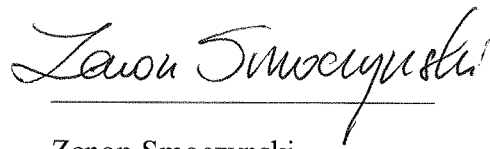
1           26)    I was personally served with two copies of Plaintiff's complaint, one on  
2                    behalf of myself and one on behalf of European Car Service.

3           27)    Andrew Maciejewski was not present at European Car Service on January 15,  
4                    2008 and could not have been personally served there.

5           28)    Andrew left San Diego on or about June 2001 and I have not seen him since.

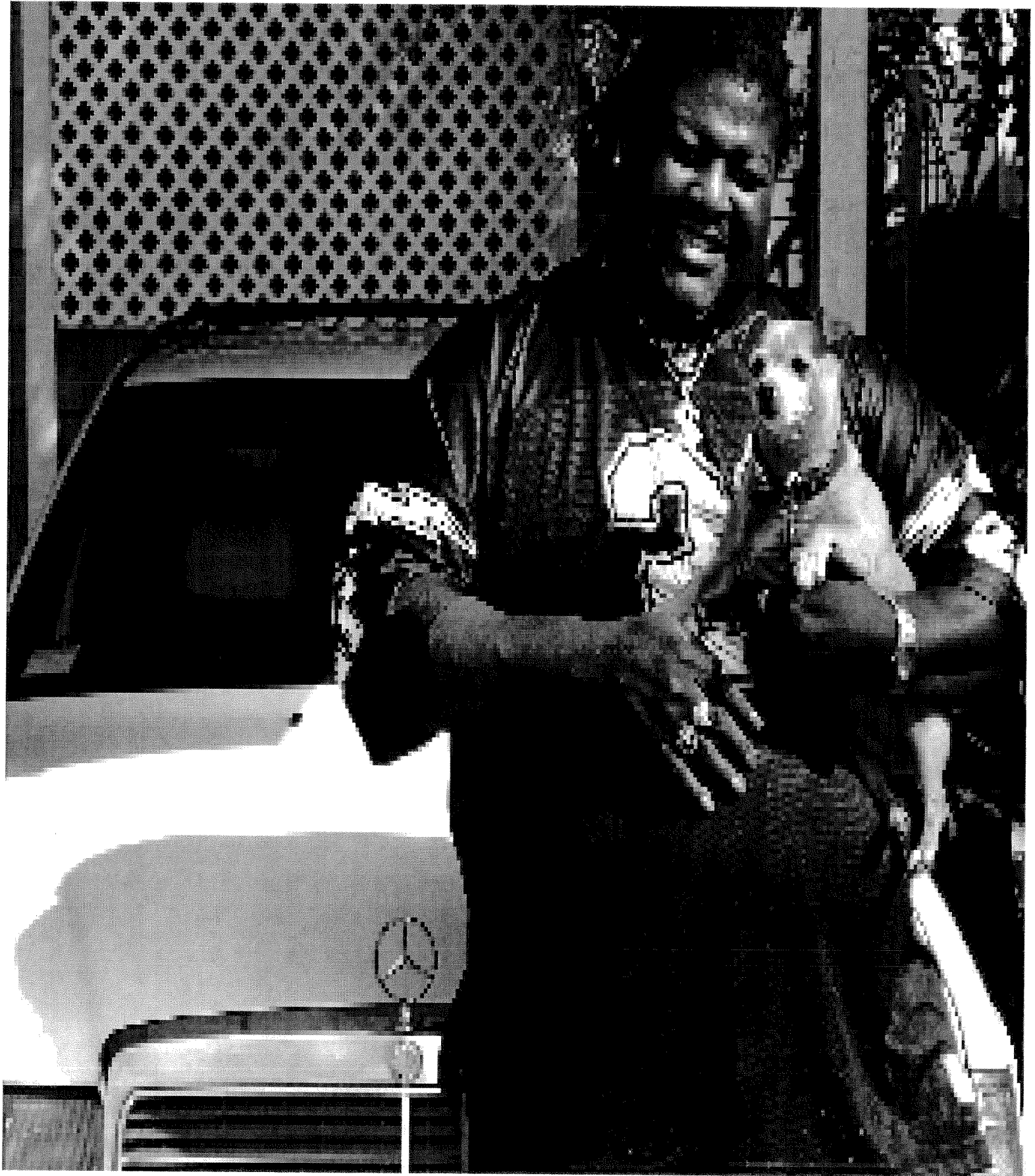
6    I declare under penalty of perjury under the laws of the State of California that the foregoing  
7    is true and correct.

8  
9    Dated: March 7, 2008

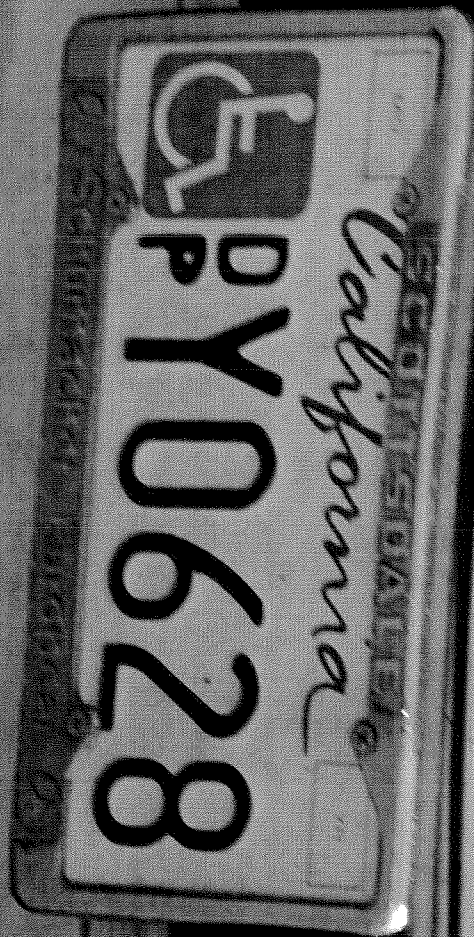
  
\_\_\_\_\_  
Zenon Smoczynski

**EXHIBIT 4**

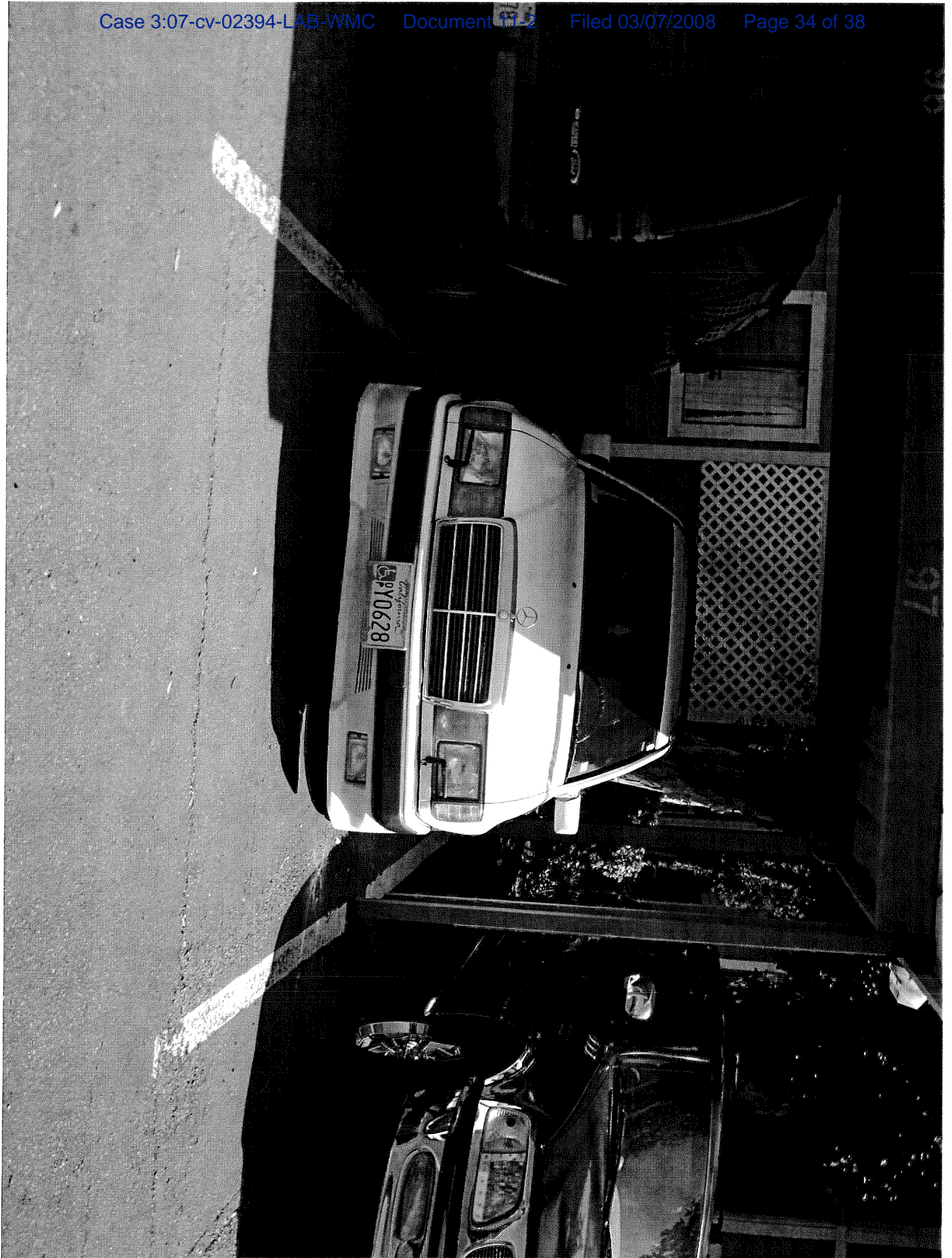


















**EXHIBIT 5**

1 Lawrence Mudgett SBN 252898  
2 Athanasios Preovolos SBN 182334  
3 Preovolos & Associates, a Law Corporation  
4 401 B Street, Suite 1520  
5 San Diego, CA 92101  
6 Telephone: 619-696-0520  
7 Facsimile: 619-238-5344

8 Attorney for Defendants  
9 Zenon Smoczynski and European Car Service

10 **DECLARATION OF ATTORNEY LAWRENCE MUDGETT**

11 I am LAWRENCE MUDGETT III, I have independent personal knowledge of the facts  
12 attested herein and declare them to be true and correct under penalty of perjury. If called  
13 upon to do so I could and would testify to the same.


- 14 1) I am the attorney for Defendants European Car Service and Zenon  
15 Smoczynski.
- 16 2) On or about March 3, 2008 I ran a google search for Karel Ray Spikes on the  
17 internet on my computer at work.
- 18 3) The first result listed was for Karel Ray Spikes' personal website  
19 "karelrayspikes.com".
- 20 4) The home page for "karelrayspikes.com" features a picture of Karel Ray  
21 Spikes posing with a Mercedes 300TE wagon attached hereto as exhibit 4.
- 22 5) Using the information provided on the website, I was able to locate Mr.  
23 Spikes' residence. On or about March 5, 2008 I traveled to Mr. Spikes'  
24 residence.
- 25 6) I witnessed the same Mercedes wagon pictured in the website photo parked  
26 approximately 20 yards from Mr. Spikes' front door and in the same setting  
27 as it appears in the photo.
- 28 7) I observed a wheel chair in the trunk and took the other photos attached in  
exhibit 4.
- 8) On or about March 5, 2008 I showed the photos to my client Zenon  
Smoczynski.

1           9)     He was shocked to learn that the individual pictured in the photos was the  
2                 Plaintiff in the present action.

3           10)    He then recalled the events that transpired on or about July 10, 2007 listed in  
4                 his declaration attached hereto as Exhibit 3.

5     I declare under penalty of perjury under the laws of the State of California that the foregoing  
6     is true and correct.

7  
8     Dated: March 7, 2008

  
Lawrence Mudgett III